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NORSHAHARIN

v.

PP

*b*HIGH COURT MALAYA, TAIPING
VT SINGHAM JC
[CRIMINAL APPEAL NO: 42-2-00]
6 DECEMBER 2001*c*

CRIMINAL PROCEDURE: Sentence - Plea of guilty - Appeal against sentence - Whether accused who has pleaded guilty in lower court is prevented from urging appellate court to act in revision in respect of conviction - *Mohammad Hassan v. PP*

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CRIMINAL PROCEDURE: Trial - Impartial trial - Sessions Court judge importing personal knowledge as substitute for evidence - Whether desirable - Need for court to be seen to be impartial - Whether Sessions Court judge erred in law

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EVIDENCE: Judicial notice - Judge importing own knowledge - Whether just - Whether came within exceptions as provided under ss. 56 & 57 Evidence Act 1950 - Whether Sessions Court judge erred in law

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EVIDENCE: Statement - Statement of witness - Facts of case presented by prosecution containing statements not part of ingredient of charge - Admission of unsubstantiated facts - Whether should have been expunged from the facts of case - Whether Sessions Court judge erred in law for not doing so - Appellate court's revisionary powers under s. 325 Criminal Procedure Code

g

CRIMINAL PROCEDURE: Plea of guilty - Charge - Whether prosecution required to prove its case against accused who has pleaded guilty

CRIMINAL PROCEDURE: Acquittal or discharge - Withdrawal of charge by prosecution - Whether order of striking out of charge by Sessions Court judge correct

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The appellant appealed against the decision of the learned Sessions Court judge who sentenced the appellant to imprisonment on his plea of guilty for being in possession of a false currency note, being RM50. At the Sessions Court, the appellant had pleaded guilty to the 2nd charge and claimed trial to the 1st charge. The prosecution thereafter applied to withdraw the 1st charge and the Sessions Court judge struck out the 1st charge. Accordingly, the Sessions Court judge found the appellant guilty of the 2nd charge and convicted him.

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The appellant's appeal was against the conviction and sentence.

Held:

- [1]** In following the views in *Mohammad Hassan v. PP*, an accused person who has appealed against the sentence imposed by the lower court where he has pleaded guilty is not prevented from urging the appellate court to act in revision at the hearing of the appeal in respect of the conviction which the appellant has no statutory right of appeal if it is found that the conviction is illegal or if the charge discloses no offence in law. (p 499 g-h) **a**
- [2]** The learned Sessions Court judge had wrongly allowed himself to be influenced by consideration outside the evidence by importing his personal knowledge as seen in his judgment of the case, as to the genuineness of the RM50 currency note. The court ought not to be influenced or governed by any notions of personal knowledge as a substitute for evidence. The court must only act on evidence placed before it and not depart from this established principle. As such, the Sessions Court judge had erred in law and this court was not able to confirm the conviction and instead quashed it. Consequently, it was also not necessary to hear the submission on the sentence. (p 502 a-b) **b**
- [2a]** The Sessions Court judge's duty was merely to make a finding of guilt or otherwise based on the materials and evidence which was placed before the court unless it came within the exception as provided under s. 56 and 57 of the Evidence Act 1950. However, the personal knowledge which the judge had imported as a substitute for evidence did not come under one of the exceptions to the general rule. (p. 504 c-d) **c**
- [3]** The learned Sessions Court judge had also erred in law when he failed to direct his mind judiciously to the facts of the case for the 2nd charge as presented by the prosecution. Further, the facts of the case contained statements which were not part of the ingredient of the charge. These statements were irrelevant and thus, should have been expunged from the facts. (p 504 g-i & 508 b) **d**
- [3a]** The last paragraph of the facts which stated that Bank Negara Malaysia had certified the RM50 note to be false was also not admissible and ought to have been expunged as the certificate from the Central Bank to certify that the currency note was false as required under s. 399 of the Criminal Procedure Code, was not tendered as an exhibit. Therefore, this grave error in the proceedings had occasioned a miscarriage of justice, thus enabling this court to readily intervene and exercise its revisionary powers as provided under s. 325 of the Criminal Procedure Code. (p. 505 d-e, i & 506 a) **e**
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- a* [4] It was also reiterated that where an accused has pleaded guilty to the charge and admitted the facts of the case as presented by the prosecution and if the charge disclosed an offence as recognised in law and the facts support the charge, there is no requirement for the prosecution to prove its case against the accused. (p. 507 f)
- b* [5] As to the order of the Sessions Court judge which struck out the 1st charge, this court was of the view that the order of striking out was an erroneous order in law and could not be sustained. Where the prosecution offers no evidence against an accused to an offence to which he is charged or applies to withdraw the charge, the order of the court
- c* should be an acquittal and discharge of the accused. (p. 508 c)

[Appeal allowed; conviction quashed and sentence set aside. Plea of guilty on 2nd charge rejected, plea of not guilty recorded. Retrial ordered before another Sessions Court judge. Order of striking out of 1st charge by Sessions Court judge set aside, substituted with order that appellant be acquitted and discharged.]

Case(s) referred to:

- e* Chok Mong Hoo v. PP [1995] 1 CLJ 678 (*refd*)
Eng Song Hai v. PP [1954] 20 MLJ 38 (*refd*)
Hajar Ishak v. PP [2000] 4 CLJ 46 (*dist*)
Har Pushad v. Shoe Dyal [1876] LR3 IA 259 (*refd*)
Hassan Dollah v. PP [1996] 5 MLJ 285 (*refd*)
Kerry v. Carter [1969] 1 WLR 1372 (*refd*)
Lee Seow Kuan v. Rex [1940] 9 MLJ (SSR) 211 (*refd*)
Ly See Chow v. PP [1971] 1 MLJ 138 (*refd*)
- f* Manokaran & Anor v. PP [1979] 1 MLJ 262 (*not foll*)
Melvani v. PP [1971] 1 MLJ 137 (*refd*)
Mohammad Hassan v. PP [1997] 1 CLJ Supp 485 (*refd*)
PP v. H Chamras Tasaso [1975] 2 MLJ 44 (*refd*)
PP v. Lee Ee Teong [1953] 19 MLJ 244 (*refd*)
PP v. Ng Mong Kia & Ors [1993] 3 CLJ 384 (*refd*)
- g* PP v. Ng Nam Onn [1964] 30 MLJ 455 (*refd*)
PP v. Syed Abdul Bahari Shahabuddin [1979] 1 MLJ 87 (*foll*)
Rex v. Soh Eng Chiang [1937] MLJ 247 (*refd*)
Rex v. Wong Kiang Chin [1938] 7 MLJ (SSR) 178 (*refd*)
Sau Soo Kim v. PP [1975] 2 MLJ 134 (*refd*)
- h* Sures Perumal v. PP [2001] 2 CLJ 88 (*refd*)
Swander Singh Bawa Singh v. PP [1996] 1 CLJ 356 (*refd*)
Tan Lay Chen v. PP [2000] 4 CLJ 492 (*foll*)
Veerian T Latchmanen v. PP [2001] 7 CLJ 466 (*refd*)
Yue Sang Cheong Sdn Bhd v. PP [1973] 2 MLJ 77 (*refd*)
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Legislation referred to:

Criminal Procedure Code, ss. 173(b), 305, 316, 325, 399A, 422

Evidence Act 1950, ss. 56, 57

Penal Code, s. 489B, C

For the appellant - Manjit Singh; M/s Manjit & Co

For the respondent - Abdul Hakim Amir Ahmad Nordin DPP

Reported by Raja Vishnu Sivarajah

JUDGMENT**VT Singham JC:**

This is an appeal against the decision of the learned sessions court judge, Taiping given on 17 October 2000 where the appellant was sentenced to 12 months imprisonment on his plea of guilty for being in possession of a false currency note, being RM50, an offence under s. 489C of the Penal Code and punishable under the same section.

In this case, the appellant Norshaharin @ Norshaharin Mat, aged 34 years who was the chief cashier of MBF Finance Berhad at the Parit Buntar branch was charged at the sessions court, Taiping for two offences, namely:

(a) Pertuduhan Pindaan

Bahawa kamu pada 2/10/96 diantara jam lebih kurang 8.40 pagi hingga jam lebih kurang 2.05 petang di Cawangan MBF Parit Buntar No. 2 dan No. 4 Jalan Temenggung Pusat Bandar Parit Buntar, di dalam Daerah Kerian, di dalam Negeri Perak, telah menggunakan mata wang palsu sebagai tulen iaitu sebanyak 28 keping note RM50.00 yang memakai siri nombor yang sama iaitu AP 4747375, mengetahui atau mempunyai sebab untuk mempercayai bahawa note-note tersebut sebagai palsu. Oleh yang demikian kamu telah melakukan satu kesalahan dibawah Seksyen 489B Kanun Keseksaan dan boleh dihukum dibawah peruntukkan yang sama.

(b) Pertuduhan Kedua

Bahawa kamu pada 2.10.1996 jam lebih kurang 1.00 tengahari di Cawangan MBF Parit Buntar No.2 dan No.4 Jalan Temenggong, Pusat Bandar Parit Buntar, di dalam daerah Kerian, di dalam Negeri Perak, telah mempunyai dalam milikan kamu sekeping wang palsu iaitu note RM50.00 yang memakai siri nombor AP 4747375 dengan menyedari bahawa mata wang tersebut adalah palsu dan berniat untuk menggunakan mata wang tersebut sebagai tulen, dengan itu telah melakukan satu kesalahan di bawah Seksyen 489C Kanun Keseksaan dan boleh dihukum di bawah peruntukkan yang sama.

a Section 489B of the Penal Code states as follows:

Using genuine forged or counterfeit currency notes or bank notes.

b Whoever sells to, or buys or receives from, any other person, or otherwise traffics in or uses as genuine, any forged or counterfeit currency note or bank note, knowing or having reason to believe the same to be forged or counterfeit, shall be punished with imprisonment for a term which may extend to twenty years, and shall also be liable to fine.

Section 489C of the Penal Code states as follows:

c Possession of forged or counterfeit currency notes or bank notes.

Whoever has in his possession any forged or counterfeit currency note or bank note, knowing or having reason to believe the same to be forged or counterfeit and intending to use the same as genuine or that it may be used as genuine, shall be punished with imprisonment for a term which may extend to ten years.

d The punishment for an offence under s. 489B of the Penal Code is imprisonment for a term which may extend to 20 years and shall also be liable to a fine and the punishment for an offence under s. 489C of the Penal Code is imprisonment for a term which may extend to ten years.

e On 17 October 2000, at the Sessions Court, Taiping, the appellant pleaded guilty to the 2nd charge and he claimed trial to the 1st charge. When the appellant pleaded guilty to the 2nd charge, the prosecution withdrew the 1st charge against the appellant and the learned Sessions Court judge struck out the 1st charge. In addition to pleading guilty to the 2nd charge, the appellant also admitted the facts of the case as presented by the prosecution. The facts of the case as presented by the prosecution was as follows:

f Pengadu dalam kes ini ialah Abd. Rahman bin Sari pada ketika itu berusia 43 tahun, bekerja sebagai Ketua Juruwang UMBC Parit Buntar, Perak.

g Semasa bertugas pada 2/10/96 jam lebih kurang 11.45 pagi, pengadu telah mendapat maklumat mengenai pengedaran wang palsu dalam bentuk note RM 50.00. Beliau kemudian membuat laporan polis sebagaimana Parit Buntar Repot 1160/96.

h Berdasarkan kepada laporan polis oleh pengadu, pihak polis telah menjalankan siasatan dipremis MBF Parit Buntar. Dalam pemeriksaan, pihak polis telah merampas sekeping mata wang palsu dalam bentuk RM 50.00, siri nombor AP 4747375 yang pada asalnya dalam milikan YKT tetapi kemudian diserahkan bersama-sama sejumlah wang tulen yang lain kepada Chuah Mooi Kheng, juruwang MBF yang telah mengantikan tugas YKT secara sementara apabila YKT keluar makan tengahari pada jam 1.00 tengahari 2/10/96.

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Siasatan menunjukkan YKT yang bertugas sebagai Ketua Juruwang MBF telah menyimpan dalam milikannya mata wang palsu ini dengan niat untuk digunakan sebagai tulen dengan cara menyerahkannya kepada pelanggan MBF yang berurusan dengan YKT melalui kaunter beliau atau melalui Chuah Mooi Kheng yang mengantikannya semasa waktu makan tengahari.

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Bank Negara Malaysia telah mengesahkan bahawa mata wang note RM50.00 yang diambil dari milikan YKT oleh polis ini adalah palsu.

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Accordingly, the learned Sessions Court judge found the appellant guilty of the 2nd charge and convicted him. Upon hearing the mitigation plea by his counsel, Manjit Singh and the reply of the prosecuting officer who said “serah pada mahkamah”, the appellant was sentenced to 12 months imprisonment. The appellant who was dissatisfied with the decision filed an appeal to the High Court, Taiping against both the conviction and sentence. The appellant then filed the petition of appeal through his counsel and raised several grounds of appeal against both the conviction and sentence. Amongst the grounds that were raised against the conviction was that:

*c**d*

Appeal Against Conviction

- (a) the learned Sessions Court judge failed to consider that there was no proof to show that the currency note was false as there was no certificate tendered by the prosecution from the governor of the central bank to certify that the currency note was false as required under s. 399A of the Criminal Procedure Code;
- (b) the learned Sessions Court judge erred in law and in fact when he imported his own knowledge in the criminal matter that the currency note RM50 was false. The learned Sessions Court judge in his judgment said “looking at the currency note, this is a very good forgery, it has the normal silver thread but the water mark on the left hand side is absent and the currency note is smoother.”

*e**f*

Section 399A of the Criminal Procedure Code states that:

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Where in any criminal proceeding it is necessary to decide whether a currency note or coin is or is not forged, a certificate signed by the Governor of the Central Bank or any officer authorised in writing by him in that behalf that he is satisfied by personal examination that such note or coin is or is not forged, shall be sufficient evidence that such note or coin is or is not forged, as the case may be, and neither the Governor nor any officer of the Bank shall be cross-examined with regard to the contents of such certificate unless the Court otherwise orders. (emphasis by this Court)

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a Appeal Against Sentence

- (c) as against the sentence, the appellant's counsel submitted that the learned Sessions Court judge had failed to consider all the mitigating factors that were put forward on behalf of the appellant. He also submitted that the sentence was manifestly excessive when considering the background of the appellant ie, he was a first offender, who is married with a child and that his wife was expecting another child and that the appellant has resigned from the MBF Finance Berhad and that the incident happened about five years ago.
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- The appellant's counsel urged upon this court to exercise its revisionary powers to quash the conviction as there was a fundamental breach of the criminal law which had occasioned a miscarriage of justice. The appellant's counsel was candid when he conceded on being questioned by this court that since the appellant had pleaded guilty, he has no right of appeal against the conviction as provided under s. 305 of the Criminal Procedure Code. Section 305 of the Criminal Procedure Code states that:
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When plea of guilty limited right of appeal.

- When an accused person has pleaded guilty and been convicted by a Magistrate on such plea, there shall be no appeal except as to the extent or legality of the sentence.
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In *Mohammad Hassan v. PP* [1997] 1 CLJ Supp 485, His Lordship Augustine Paul JC (as he then was) said:

- (2) Section 305 of the CPC provides **that a person who has been convicted on his plea of guilt is entitled to appeal only against the extent or legality of the sentence.** However, once such an appeal has been lodged there is nothing to prevent an appellant from contending at the hearing that the conviction is illegal and requesting the court hearing the appeal to act in revision. The court is entitled to and will, where appropriate, act in revision and set aside a conviction; *Lee Yu Fah & Ors v. PP* [1937] MLJ 179, *Mohd Dalhar bin Redzwan & Anor v. Datuk Bandar, Dewan Bandaraya Kuala Lumpur* [1995] 1 MLJ 645 see A.. (emphasis by this Court)
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On the other hand, in *Manokaran & Anor v. PP* [1979] 1 MLJ 262, His Lordship Abdoolcader J (as His Lordship then was) said:

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- I have however not only extensive powers of revision in criminal proceedings under the provisions of section 325 of the Criminal Procedure Code but even wider powers conferred by section 35 of the Courts of Judicature Act, 1964, and the Deputy Public Prosecutor agrees that in a case like this where there is an appeal against conviction on a plea of guilty it is open to me to deal with the conviction in the exercise of my powers of revision if the
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circumstances of the case so warrant. I would merely add that in my view **notwithstanding the provisions of section 305 of the Criminal Procedure Code an appeal against a conviction on a plea of guilty will still lie if the charge discloses no offence in law**, in which event the conviction itself would be illegal and a nullity. (emphasis by this Court)

As between the two cases referred to above by this court in reference to the limited right of appeal where an accused person has pleaded guilty as provided under s. 305 of the Criminal Procedure Code, this court with respect, declines to follow the views in *Manokaran & Anor v. PP* [1979] 1 MLJ 262 and instead would follow the views in *Mohammad Hassan v. PP* [1997] 1 CLJ Supp 485. This court is of the view that the function of the court in respect of a statutory provision which is expressly clear is merely to interpret the provisions of the statute and not to include or import words into the statute. If s. 305 of the Criminal Procedure Code expressly and clearly states that there shall be no appeal accorded to an accused person who has pleaded guilty and been convicted by a court on such plea except as to the extent or legality of the sentence, this court cannot import words into the statute to state that "... an appeal against a conviction on a plea of guilty will still lie if the charge discloses no offence in law" as that inclusion to s. 305 of the Criminal Procedure Code would with respect amount to usurping the function of the legislature. Every statutory provision or limitation in a statute must have a purpose and becomes law after a debate in parliament and passed by parliament. Unless and until such provision or limitation in the statute are strictly adhered to by litigants, the High Courts will be flooded with appeals against conviction where an accused person has pleaded guilty and the sentence has been imposed in accordance with the law and in the exercise of a judicial discretion. This court is of the view that if the limitation of an appeal against conviction as provided under s. 305 of the Criminal Procedure Code is not strictly observed and the views in *Manokaran & Anor v. PP* [1979] 1 MLJ 262, is allowed to prevail there is no guarantee that there will be no abuse by litigants who may wish to try their luck by lodging an appeal against the conviction.

Notwithstanding that this court would prefer to follow the views in *Mohammad Hassan v. PP* [1997] 1 CLJ Supp 485, this court wishes to make it clear that an accused person who has appealed against the sentence imposed by the lower court where he has pleaded guilty is not prevented from urging the appellate court to act in revision at the hearing of the appeal in respect of the conviction which the appellant has no statutory right of appeal if it is found that the conviction is illegal or if the charge discloses no offence in law (see *Sures Perumal v. PP* [2001] 2 CLJ 88 and *Veerian T Latchmanen v. PP* [2001] 7 CLJ 466). Both the two cases are the decision of this court (see *Sau Soo Kim v. PP* [1975] 2 MLJ 134 at 137-138).

- a* Further still if the correct procedures for an appeal are complied and the appellate court finds that the charge discloses no offence in law and/or the appellant or even the deputy public prosecutor if he is candid could still contend and bring this matter to the attention of the judge and move the appellate court to exercise its revisionary powers under s. 325 of the Criminal
- b* Procedure Code with the view to quash the conviction notwithstanding that there is no right of appeal against the conviction on a plea of guilty as provided under s. 305 of the Criminal Procedure Code. If the appellate court finds that there is basis for the complaint and if the complaint has occasioned a miscarriage of justice, the appellate court in those circumstances could then
- c* invoke its revisionary powers and make an appropriate order under s. 325 to be read with s. 316 of the Criminal Procedure Code.

- In the instant appeal, the learned counsel for the appellant submitted that the circumstances of the case as raised in the petition of appeal calls for this court sitting in an appellate capacity to intervene as the learned Sessions Court judge
- d* had imported his personal knowledge as a substitute for evidence which should have been forthcoming from the prosecution. He submitted that without the production of the certificate from the governor of bank negara pursuant to s. 399A of the Criminal Procedure Code, there was no evidence that the currency note being the subject matter of the 2nd charge was false
- e* notwithstanding that the appellant had pleaded guilty to the 2nd charge. He also contended that the 2nd charge against the appellant was not proved. He therefore urged this court to exercise its revisionary powers and quash the conviction.

- f* On the other hand, the learned deputy public prosecutor with his usual frankness conceded that the learned Sessions Court judge cannot import his personal knowledge as a substitute for evidence and that there was infact no evidence before the court to support the findings of the learned Sessions Court judge where he had stated, "looking at the currency note, this is a very good forgery, it has the normal silver thread but the water mark on the left hand
- g* side is absent and the currency note is smoother." He also conceded that it was the duty of the prosecution to have tendered the certificate from the governor of bank negara pursuant to s. 399A of the Criminal Procedure Code to support or to show that the currency note was infact false. Nevertheless, the learned deputy public prosecutor had correctly submitted that there was
- h* no requirement for the prosecution to prove the charge against the appellant as contended by the learned counsel for the appellant since the appellant had pleaded guilty to the charge.

- The learned deputy public prosecutor further submitted that the certificate from the governor of bank negara was actually in the file of the investigation papers
- i* but the prosecuting officer at the Sessions Court due to an oversight did not

tender the certificate. However, the learned deputy public prosecutor made a concession and urged this court to order a retrial in the event this court is inclined to exercise its revisionary powers with a view to quash the conviction.

As to the 1st charge, on being questioned by this court as to whether the order of the learned Sessions Court judge which struck out the 1st charge against the appellant was correct in law since the prosecution had applied to withdraw the charge, the learned deputy public prosecutor submitted that the order was certainly wrong and that the appellant ought to have been acquitted and discharged when the prosecution applied to withdraw the 1st charge against the appellant.

This court is of the view that the complaints raised by the appellant's counsel on the findings of the learned sessions court judge goes to the root of our judicial system where litigants expect that justice is administered and carried out in accordance with settled principles of law and that the decision of the court is based on the evidence placed before the court as provided under the Evidence Act 1950 and not from any information or knowledge obtained outside the court or from other sources. In this case, it is obvious that the learned Sessions Court judge took upon himself to fill this gap for the prosecution and substituted this gap with his personal knowledge as evidence for the prosecution as to whether the currency note was infact false. This is a clear case of the learned Sessions Court judge usurping the function of the governor of the central bank where he stated that "looking at the currency note, this is a very good forgery, it has the normal silver thread but the water mark on the left hand side is absent and the currency note is smoother." This extra ordinary function on the part of the learned sessions court judge is unusual and ought to be rejected outright in our judicial system. It would appear that the learned Sessions Court judge was infact wanting to satisfy himself whether the RM50 currency note was a false currency note even though the appellant had pleaded guilty to the 2nd charge for being in possession of the false currency note and intending to use it as genuine. If the learned Sessions Court judge was not satisfied that the facts presented by the prosecution was not sufficient to support the charge or that the ingredients of the charge did not disclose an offence under the law, his duty is simply to reject the plea of guilty and record a plea of not guilty instead of importing his personal knowledge as a substitute for evidence which was primarily and solely the function of the prosecution.

In *Hassan Dollah v. PP* [1996] 5 MLJ 285, His Lordship Roberts CJ said:

If at a later stage, it appears for example, that the facts do not support the charge brought, or that there is a possible defence to the charge, a magistrate should reverse the plea of guilty which he has entered and record a plea of not guilty by the defendant.

- a* This court finds that the learned Sessions Court judge had wrongly allowed himself to be influenced by consideration outside the evidence by importing his personal knowledge as to the genuineness of the RM50 currency note. This court wishes to make it clear that the court ought not to be influenced or governed by any notions of personal knowledge as a substitute for evidence.
- b* The court must only act on evidence placed before it and not to depart from this established principle which is enshrined in our judicial system.

In *PP v. H Chamras Tasaso* [1975] 2 MLJ 44, His Lordship Hashim Yeop A Sani J (as he then was) said:

- c* Our system of justice has its own traditions. These traditions are based on well established principles. One of these principles is that an accused person is presumed innocent until proven guilty. The right of the accused in any criminal trial will be ineffective and meaningless unless such right is supported by the spirit and the traditions on which our system is built. The importance of the presumption of innocence lies not on its abstract principle but in the extent to which in actual practice an accused person, irrespective whether he be a citizen or not, is in a position to assert that principle against an over-eager prosecutor or official who may find it easier to build up a case based on the assumption of guilt than by the laborious collection of independent evidence.
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- e* Sessions Court judges and magistrates are reminded that it is not open to them to import their personal knowledge even if they were to possess any such knowledge or to take upon themselves a point in a criminal proceeding as a substitute for evidence or the ingredient of the charge or to fill any gap in the prosecution or defence case as this will only invite or attract unnecessary accusations of favouring one side or the other which is not a judicial exercise
- f* in the administration of justice and should cease forthwith. This court wishes to observe that it is not the function of the learned Sessions Court judge to look for evidence outside the proceedings and which was not forthcoming from the prosecution and thereby attempting to give a boost or strengthen the case for the prosecution by importation of his personal knowledge in order to justify his finding of guilt against the appellant. In *Chok Mong Hoo v. PP* [1995] 1 CLJ 678, 682, His Lordship Ian HC Chin J observed that “It must always be remembered that the appearance of justice is part of the substance of justice and it will not do if an accused person or the public derive the impression that a magistrate was bent on conviction from the beginning of a trial ... In the end, the learned magistrate would not appear to be impartial and justice was not seen to be done.”
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In *Rex v. Soh Eng Chiang* [1937] MLJ 247 at 248, Terrell, Ag CJ observed:

- i* **It is certainly not the duty of a magistrate to supplement the case for the prosecution,** but when the evidence is sufficient, but not properly understood, it is always open to a magistrate to question the witness further and ascertain

further details for the purpose of satisfying himself upon any point about which he may feel a doubt. (emphasis by this Court)

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Following the observation of Terrell Ag CJ, His Lordship Thomson, J (as he then was) in *PP v. Lee Ee Teong* [1953] 19 MLJ 244 observed:

I know, and the Magistrate knows, all about the 1,000 characters lottery; so far that matter do the majority of the adult inhabitants of this country. There is not the slightest room for doubt that it is a lottery within the meaning of the Common Gaming Houses Enactment. *Unfortunately, however, it is not open to any Judge or Magistrate to import his personal knowledge on the point into a criminal trial so as to help out evidence for the prosecution which would otherwise be inadequate to support a conviction.* (emphasis by this Court)

b**c**

In *Lee Seow Kuan v. Rex* [1940] 9 MLJ (SSR) 211, Terrell Ag CJ observed:

In his grounds of judgment the learned Magistrate clearly took judicial notice of his own personal knowledge of Chap Ji Ki gained through his experience on the Bench. This he was not entitled to do.

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In *Har Pushad v. Shoe Dyal* [1876] LR3 IA 259, Their Lordships of the Privy Council said:

A judge cannot without giving evidence as a witness import into a case his own knowledge of particular facts. (source *Evidence, Practice and Procedure* 2nd Edition by Dato' Augustin Paul J)

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In *Rex v. Wong Kiang Chin* [1938] 7 MLJ (SSR) 178, His Lordship The Hon. Chief Justice McElwaine CJ in allowing the appeal against the conviction of the accused for possession of 49 pieces of forged \$10 currency note said as per the headnotes:

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The jury are not allowed to judge for themselves in such a case whether or not the notes are forgeries as to do so would confuse the functions of a juror with that of a witness and the fact such notes are forgeries must be strictly proved at the trial.

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In another passage of the judgment, the learned chief justice said “while a juror may apply to the subject before him that general knowledge which any man may be supposed to have we doubt if that is sufficient for the detection of forgeries which sometimes deceive even officers of a bank”. Further, His Lordship also said in another passage of the judgment that:

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The legislature has therefore placed this grave responsibility of certifying as to the genuineness or otherwise of currency notes on a very senior officer who is expected by knowledge and experience to be so expert in the detection of forgery that his certificate is to be accepted in a court of law. He cannot delegate that responsibility.

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a In *Melvani v. PP* [1971] 1 MLJ 137, His Lordship Wee Chong Jin CJ observed:

... in so far as arriving at the finding of facts as to whether the forged document, in this case a currency note, is or is not a good forgery, it is undesirable for a trial judge without the benefit of any evidence at all on the question to import his own view of the forgeries in question.

b

In the instant appeal, there is no evidence that the learned Sessions Court judge is an expert in currency notes or he has been authorised by the governor of the central bank with such grave responsibilities to certify or to confirm as to the genuineness or otherwise of the currency notes. This unauthorised responsibility carried out by the learned Sessions Court judge must cease forthwith. His duty was merely to make a finding of guilt or otherwise based on the materials and evidence which was placed before the court unless it comes within the exception as provided under ss. 56 and 57 of the Evidence Act 1950. However, the personal knowledge which the learned sessions court judge had imported as a substitute for evidence did not come under one of the exceptions to the general rule, that all facts in issue and relevant facts must be established by evidence. It is also important to state at this stage that personal or particular knowledge gained through experience as a deputy public prosecutor or on the bench of the genuineness of the RM10 currency note cannot be used to take judicial notice. In *Ly See Chow v. PP* [1971] 1 MLJ 138, His Lordship Sharma J said:

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The function and duty of the courts is to act with open and fearless impartiality and not in darkness or under any seal of secrecy. Justice has to be administered by the courts according to the law. ... We are fortunate that in this country the law is supreme and the liberty of the individual is well guarded within the bounds of that law.

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In addition, this court also finds that the learned Sessions Court judge had erred in law when he failed to direct his mind judiciously to the facts of the case for the 2nd charge as presented by the prosecution which contended that the RM50 currency note was meant for circulation to customers of MBF whereas the 2nd charge expressly states that the appellant was charged for only in possession of false currency note, being RM50 and with intend to use the currency note as genuine. Further, the facts of the case as presented by the prosecution and marked as exh. P2 in respect of the 2nd charge also contains *inter alia* the following “Semasa bertugas pada 2 Oktober 1996 jam lebih kurang 11.45 pagi pengadu telah mendapat maklumat mengenai pengedaran wang palsu dalam bentuk note RM50” which is also not part of the ingredient of the charge and was irrelevant and should have been expunged from the facts.

In *Yue Sang Cheong Sdn Bhd v. PP* [1973] 2 MLJ 77, His Lordship HT Ong, then CJ and HS Ong FJ dissented from the views of Gill FJ (as he then was) in which HT Ong CJ expressed his opinion and said:

For my own part, however, I feel that it is not only the right, but also the duty of this court to see that justice is done and seen to be done in all cases brought before us in accordance with established rules of procedure. As Viscount Radcliffe said in *Ibralebbe v. Reg.* [1964] 1 All E.R. 251 & 257. 'Justice is owed: it is not granted by favour or accorded at discretion.' If, in the instant case, the conviction was wrong by reason of its being against the weight of evidence, it surely cannot be right of this court to wear blinkers and treat the questions of law raised as being purely of academic interest and thus allow the conviction to stand.

It cannot be disputed that the abovementioned statement concerning the circulation of false currency notes to the customers of MBF branch and that the complainant had received information as to trafficking of false currency note being RM50 as contained in the facts and as presented by the prosecution for the 2nd charge was infact highly prejudicial to the appellant as it was not part of the ingredients of the charge. Further, the last paragraph in the Facts states that the Bank Negara Malaysia has certified the RM50 currency note to be false is also not admissible and ought to have been expunged as the certificate as required under s. 399A of the Criminal Procedure Code was not tendered as an exhibit. Therefore, this grave error in the proceedings have occasioned a miscarriage of justice and the conviction cannot be allowed to be sustained. Section 422 of the Criminal Procedure Code states that:

Irregularities not to vitiate proceedings

Subject to the provisions contained in this Chapter no finding, sentence or order passed or made by a Court of competent jurisdiction shall be reversed or altered on account of:

- (a) any error, omission or irregularity in the complaint, sanction, consent, summons, warrant, charge, judgment or other proceedings before or during trial or in any inquiry or other proceeding under this Code;
- (b) the want of any sanction; or
- (c) the improper admission or rejection of any evidence,

unless such error, omission, irregularity, want, or improper admission or rejection of evidence has occasioned a failure of justice. (emphasis by this Court)

In the circumstances, this court cannot shut its eyes and be seen to be wearing blinkers to the obvious errors in law as contained in the Record of Appeal but must be prepared to readily intervene and exercise its revisionary powers

- a* as provided under s. 325 of the Criminal Procedure Code. It has been said time and time again by our superior courts including the High Courts that Sessions Court judges and magistrates must not be seen to have acted mechanically in their performance of their judicial duty but must read the facts of the case as presented by the prosecution side by side with the charge so
- b* as to ensure that the facts presented by the prosecution discloses an offence in law and also to ensure that it does not contain any prejudicial matters or facts which might creep into the facts or disclose another offence and which become irrelevant or not admissible to the charge to which the accused had pleaded guilty.
- c* As to the contention of the learned counsel for the appellant that the charge against the appellant was not proved, this court is of the view that the prosecution need not prove the charge where an accused had pleaded guilty to the charge. In such circumstances, the duty of the prosecution is to ensure that the facts when presented against an accused disclose an offence as
- d* recognised in law. Accordingly, the question of the prosecution having to prove the charge against an accused does not arise where an accused has pleaded guilty and admitted the facts which disclose an offence as recognised in law (see *Tan Lay Chen v. PP* [2000] 4 CLJ 492 at 499).
- e* In *Eng Song Hai v. PP* [1954] 20 MLJ 38, His Lordship Bellamy J said:
- f* (1) **as the appellant had pleaded guilty there was no question of the prosecution proving their case** and therefore it was not necessary for the learned Magistrate to have evidence that the provisions of section 427(1) of the Criminal Procedure Code had been complied with; (emphasis by this Court)
- f* In *Tan Lay Chen v. PP* [2000] 4 CLJ 492, His Lordship Augustine Paul J following *Eng Song Hai v. PP* [1954] 20 MLJ 38 said:
- ... following a guilty plea the prosecution is only required to give a summary of the facts of the case. This does not require the facts of the case to be proved
- g* by calling evidence.
- Following *Eng Song Hai v. PP* [1954] 20 MLJ 38 and *Tan Lay Chen v. PP* [2000] 4 CLJ 492, the contention of the learned counsel for the appellant who had relied on the decision in *Hajar Ishak v. PP* [2000] 4 CLJ 46 that even
- h* in a case where the appellant had pleaded guilty to the charge the prosecution must prove the charge against the appellant with respect cannot be sustained. Accordingly, in so far as to the issue of the prosecution having to prove the charge against an accused who has pleaded guilty and admitted the facts as observed in *Hajar Ishak v. PP* [2000] 4 CLJ 46 with respect is not followed.
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It is important to distinguish the fact in *Hajar Ishak v. PP* [2000] 4 CLJ 46, where the learned Sessions Court judge *inter alia* did not fully comply with the strict requirements of s. 173(b) of the Criminal Procedure Code where the appellant had pleaded guilty to the charge. Section 173(b) of the Criminal Procedure Code states:

If the accused pleads guilty to the charge, whether as originally framed or as amended, the plea shall be recorded and he may be convicted on it and the Court shall pass sentence according to law:

Provided that before a plea of guilty is recorded the Court shall ascertain that the accused understands the nature and consequences of his plea and intends to admit without qualification, the offence alleged against him.

Consequently and rightfully the conviction cannot be sustained.

In any event, the main issue that was argued in *Hajar Ishak v. PP* [2000] 4 CLJ 46 was that the chemist report was not served on the appellant as required under s. 399 of the Criminal Procedure Code which the prosecution had tendered as an exhibit to support the charge. However, it is to be observed that the fact remains that the appellant had pleaded guilty to the charge framed against her in *Hajar Ishak v. PP* [2000] 4 CLJ 46. Notwithstanding the plea of guilt, Her Ladyship Zainon Ali J has taken the view that even in cases where an accused had pleaded guilty to the charge, it is still necessary for the prosecution to prove its case and that there must be strict compliance with s. 399 of the Criminal Procedure Code in so far as the service of the chemist report. Nevertheless, this court wishes to reiterate that where an accused has pleaded guilty to the charge and admitted the facts of the case as presented by the prosecution and if the charge discloses an offence as recognised in law and the facts support the charge, there is no requirement for the prosecution to prove its case against the accused. In this respect, this court wishes to observe that it has never been the practice and such strict legal proof did not become necessary where an accused has pleaded guilty to the charge and admitted the facts and the charge discloses an offence as recognised in law (see *Swander Singh Bawa Singh v. PP* [1996] 1 CLJ 356).

In *PP v. Ng Mong Kia & Ors* [1993] 3 CLJ 384 at 385 - 386, His Lordship Dato' Hj Abdul Kadir Sulaiman J (as he then was) presently judge of the Court of Appeal said:

The brief facts tendered by the prosecution in a case where an accused pleads guilty to a charge constitute all the evidence that is available to the prosecution in support of its case. The fate of the prosecution is dependent on these brief facts of the case. Based on these facts the Court will have to make a decision one way or another at the end of the day, whether the accused is guilty or not guilty on the charge as when they are being admitted unequivocally by

- a* the accused, or whether a plea of not guilty be entered instead and proceed to hear the case as where the accused had disputed to the facts so given. (emphasis by this Court)

As the learned Sessions Court judge had erred in law by arbitrarily taking into consideration his personal knowledge as to the genuineness of the RM50

b currency note as a substitute for the evidence, this court cannot confirm the conviction and ought to quash it. Consequently, it was not necessary to hear submissions on the sentence.

- c* As to the order of the learned Sessions Court judge which struck out the 1st charge when the prosecution applied to withdraw the 1st charge, this court is of the view that the order of striking out was an erroneous order in law and cannot be sustained. It is elementary rule that where the prosecution offers no evidence against an accused to an offence which he is charged or applies to withdraw the charge, the order of the court should be an acquittal and discharge of the accused. This court could perhaps understand if this order of
- d* striking out the 1st charge was made by a new magistrate who is not too familiar with the criminal procedures but in this case there is no excuse for a Sessions Court judge to make such an erroneous order and which no doubt is contrary to the numerous cases filled in our law reports but to treat the order as an irresponsible order without any judicial mind. In *PP v. Syed Abdul Bahari Shahabuddin* [1979] 1 MLJ 87, His Lordship Abdoolcader J (as His
- e* Lordship then was) said that the order of the learned president in striking out a criminal case against an accused person was wholly unjustified and erroneous in law.

- f* In *PP v. Ng Nam Onn* [1964] 30 MLJ 455, the learned deputy public prosecutor withdrew the charge against the accused on a charge under the Betting Ordinance 1953, for having acted as a bookmaker. The learned magistrate made an order of discharge simpliciter and not an acquittal. On revision His Lordship Ong J (as he then was) held that:

- g* **where the prosecution withdraws a charge, it has been the established practice to acquit the accused.** Accordingly, His Lordship directed that the order made by the learned magistrate be amended to one of acquittal (see *PP v. Mat Zain* (1948-49) MLJ Supp 142, *Ariffin Cassim Jayne v. PP* [1953] 19 MLJ 126, *Koh Teck Chai v. PP* [1968] 1 MLJ 166, *Goh Oon Keow And Another v. Rex* [1949] 15 MLJ 35) [emphasis by this Court]
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- Following *PP v. Syed Abdul Bahari Shahabuddin* [1979] 1 MLJ 87, this court is of the view, that in a criminal case where the prosecution applies to withdraw a charge against an accused, the court ought to acquit and discharge the accused and not to strike out the charge as was ordered by the learned
- i* Sessions Court judge in the instant appeal. Nevertheless, perhaps, in a summons case it may be appropriate to strike out the summons where the circumstances so warrants or justifies.

Be that as it may, and having discussed the law on the facts and circumstances of this instant appeal where an accused has pleaded guilty, this court is not unmindful that the nature and gravity of the offence as committed by the appellant is serious and that if it remains unchecked, there could be economic crisis if false currency notes are allowed to be circulated and the situation would become more serious where such an offence is committed by an employee of a financial institution at the office of the financial institution itself. On the other hand, the cumulative effect of the errors in law which are found in this record of appeal cannot be disregarded and calls for this court to intervene. It has been said time and time again that justice should not only be done but seen to be done and that this court must put right that which has gone wrong. In *Kerry v. Carter* [1969] 1 WLR 1372, Lord Denning MR said:

... we are here to put right that which has gone wrong. If we think that the judge below was wrong, then we ought to say so ...

In the circumstances, the appeal is allowed and the conviction is quashed, the plea of guilty by the appellant on the 2nd charge is rejected and a plea of not guilty is recorded, the sentence of 12 months imprisonment is set aside. Accordingly, a retrial is ordered before another Sessions Court judge.

As for the 1st charge, the order of striking out by the learned Sessions Court judge is set aside and is substituted with an order that the appellant be acquitted and discharged.

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